Supreme Court, U.S.
FILED
SEP 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-2127.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1988.

FRED H. VAHLSING, JR.,
Petitioner,

v.

THE STATE OF MAINE,
Respondent.

MEMORANDUM OF FACTS SUPPORTING MOTION FOR RECONSIDERATION.

F. H. VAHLSING, JR., PRO SE,
1119 South E. Street,
McAllen, Texas 78501.
(512) 686-8581

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

Supreme Court of the United States

Memorandum

9/11/89

Dear Mr. Vabalsing,

This material must be printed and 40 copies submitted in accordance with Rule 33.

The case is scheduled for conference on Sept. 25, 1989. It must be re-submitted before that date to considered at the conference.

Should you have questions please call

Kathy Tycz
(202) 479-2923

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OCTOBER TERM, 1988.

FRED H. VAHLSING, JR.,
Petitioner,
v.

THE STATE OF MAINE,
Respondent.

Memorandum of Facts Supporting Motion for Reconsideration Filed By Fred H. Vahlsing, Jr. on August 17, 1989.

ATTN: Justice Byron R. White and/or any other Justices as the Court deems appropriate:

NOW COMES, F. H. Vahlsing, Jr., Petitioner, pro se, and says:

1. As pointed out in F. H. Vahlsing, Jr.'s *Motion for Reconsideration,* received by the Supreme Court of the United States on Thursday, August 17, 1989 at 2:50 p.m., F. H. Vahlsing, Jr. is requesting reconsideration of this Court's denial (by the Honorable William J. Brennan, Justice) on August 9, 1989 of

F. H. Vahlsing, Jr.'s Request for Stay of execution of F. H. Vahlsing, Jr.'s sentence until the Petition for Writ of Certiorari is granted and heard, or denied.

2. The basis of F. H. Vahlsing, Jr.'s request for such stay is specifically outlined in F. H. Vahlsing, Jr.'s "Request for Stay Pending Action on Petition for Writ of Certiorari to Supreme Court of the United States," filed on August 4, 1989 in that F. H. Vahlsing, Jr. does not believe he is *guilty* of the offense as charged.

3. As of the submission of this Memorandum, F. H. Vahlsing, Jr. has served thirty-nine (39) days of the Maine Superior Court sixty (60) day sentence for Class C perjury in the Hidalgo County Jail awaiting extradition to Maine pursuant to State of Maine 17-A Section 1253 (effective March 1, 1989).

4. In connection with a State District Court hearing at Edinburg, Texas on July 31, 1989 in Cause No. CR-473-89-E, expert medical witness, Dr. Benjamin Bujanda, of McAllen, Texas (subpoenaed for such hearing), testified under oath based upon the medical records of F. H. Vahlsing, Jr. (previously submitted to this Court in connection with F. H. Vahlsing, Jr.'s Request for Stay, filed August 4, 1989), relative to F. H. Vahlsing, Jr. being transported to Maine to serve the remaining (now) twenty-one (21) days of his Maine sentence, to wit:

> "Q. (By Mr. Blumberg) The question, doctor, was: What technical backup would be required during the transport of this patient given consideration of his medical background as you have just testified from Texas to the State of Maine?
> A. As a result of the conditions already described, actually an ambulance, an air ambulance, should be required safely to transfer him to any state, to anyplace that he would like to go in dealing with this type of problems (sic)."

(See page 46 of transcript of hearing of July 31, 1989 in the District Court, 275th Judicial District, Hidalgo County, Texas in Cause No. CR-473-89-E, a copy of which is attached hereto as Exhibit A.)

5. The two questions presented to the Supreme Court of the United States in F. H. Vahlsing, Jr.'s Petition for Writ of Certiorari are, to wit:

> I. Can a perjury conviction be upheld consistent with the Due Process Clause where the alleged false statement was made at a void administrative hearing and was immaterial to any valid admininstrative inquiry?
> II. Does an administrative proceeding which seeks to enforce ex post facto a statutory scheme concerning hazardous substances possess the legitimacy necessary to support a perjury prosecution for an alleged false statement made there?

F. H. Vahlsing, Jr. requests this Court to consider in connection therewith *whether* a person can be convicted of having made a perjurous statement if such statement *was never made*.

6. The transcript of the entire hearing before the Board of Environmental Protection on December 19, 1984 has been submitted to this Honorable Court in F. H. Vahlsing, Jr.'s Motion for Reconsideration on August 17, 1989. That Motion for Reconsideration requested this Honorable Court to carefully examine such transcript and satisfy itself that the statement in Count 3 of the Indictment (the only Count of such Indictment not dismissed) *was actually made by F. H. Vahlsing, Jr.* (and alleged to be perjurous), in that such statement *in fact was never made by F. H. Vahlsing, Jr.* A person should not be convicted of a crime if in fact such crime never occurred.

7. The whole affair of the conviction of F. H. Vahlsing, Jr. is born of political motivation to demonstrate to the people

of the State of Maine the police powers of the Environmental Laws of the State of Maine.

8. Although it is somewhat of an arduous task to read the transcript of the Board of Environmental Protection Hearing of December 19, 1984, at which it was alleged that the perjurous statement, Count 3 of the Indictment, was made by F. H. Vahlsing, Jr., since such transcript contains 215 pages, F. H. Vahlsing, Jr. requests this Honorable Court, *in order that justice be done,* to read such transcript and plainly see that the statement, Count 3 of the Indictment, to wit:

> "(3) that the building identified in the Order as containing waste pesticides and other hazardous wastes had been sold by Vahlsing, Inc. to McCain Foods, Inc. in 1976"

was never made. (If a murder was not committed, a person cannot be convicted of that murder.)

Throughout this entire egregious affair, to the knowledge of F. H. Vahlsing, Jr., neither the jury nor the Court at the time of the lower court trial of F. H. Vahlsing, Jr. read such transcript (except Judge Silsby of the Maine Superior Court, who *voided* such hearing) to ascertain if such statement was ever made even though the transcript was offered into evidence as State's trial exhibit #2 *and submitted* in the lower court trial of F. H. Vahlsing, Jr., Smith, J. A person should not be convicted of perjury pursuant to an alleged perjurious statement when in fact such statement was never made *notwithstanding the fact that the Superior Court of Maine, Silsby, J., on May 2, 1986 and June 4, 1986,* three months before the lower court trial of F. H. Vahlsing, Jr. commenced, *voided* that hearing of the Board of Environmental Protection due to its egregious nature. (See Orders of Superior Court of Maine, Silsby, J., attached as Exhibit B-1 and Exhibit B-2 hereto.)

For all of the foregoing reasons, F. H. Vahlsing, Jr. requests this great and honorable Court to take such time as necessary to read every page of the transcript of the Board of Environmental Protection hearing and ascertain *without a doubt* that the statement with which F. H. Vahlsing, Jr. was charged was never made by F. H. Vahlsing, Jr. (or even any statement resembling same) and accordingly, F. H. Vahlsing, Jr. cannot be guilty as charged.

Accordingly, this Honorable Court is requested to issue a stay of execution of the sentence of F. H. Vahlsing, Jr. until the Petition for Writ of Certiorari is granted and heard, or denied.

Respectfully submitted,

/s/ _____

F. H. Vahlsing, Jr.
Petitioner, Pro Se
1119 South E St.
McAllen, Texas 78501
(512) 686-8581

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached documentation was mailed via first class, United States mail, postage prepaid on the 21st day of August, 1989 to the following:

James T. Kilbreth, Esquire
Chief Deputy Attorney General
State House Station #6
Augusta, Maine 04333

/s/ _____
F. H. Vahlsing, Jr.

[1]

CAUSE NO. CR-473-89-E

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
	X	
VS.	X	275th JUDICIAL DISTRICT
	X	
FREDERICK VAHLSING, JR.	X	HIDALGO COUNTY, TEXAS

TRANSCRIPT OF HEARING ON HABEAS CORPUS

Judge Juan R. Partida, Presiding

Clarisia Rodriguez, Deputy
Official Court Reporter
275th District Court
Hidalgo County
State of Texas

Exhibit A

. . . . . .

[46]

evidence. This doctor has not testified that it would require any kind of medical backup, your Honor, during the transportation of this individual.

THE COURT: Overruled. This witness may answer.

Q. (By Mr. Blumberg) The question, doctor, was: What technical backup would be required during the transport of this patient given consideration of his medical background as you have just testified from Texas to the State of Maine?

A. As a result of the conditions already described, actually an ambulance, an air ambulance, should be required safely to transfer him to any state, to anyplace that he would like to go in dealing with this type of problems.

Q. Thank you, doctor.

MR BLUMBERG: We have no further questions. We pass the witness.

MS. DOMINGUEZ: Your Honor, may we be given a short recess to review this doctor's medical records? They're about six or seven pages, your Honor; and they're written single spaced. If I may have an opportunity to read them before I cross-examine Dr. Bujanda please.

. . . . . .

[161]

CAUSE NO. CR-473-89-E

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
	X	
VS.	X	275th JUDICIAL DISTRICT
	X	
FREDERICK VAHLSING, JR.	X	HIDALGO COUNTY, TEXAS

I, Clarisia Rodriguez, Deputy official court reporter for the 275th District Court of the State of Texas, do hereby certify that the foregoing pages contain a true and correct Transcript of Hearing in the above entitled and numbered cause had on the 31st of July, A.D., 1989; that I was present at the time of said proceedings and reported the same in machine shorthand.

I further certify that the attached exhibits, which have been offered and admitted, are the originals of the exhibits admitted, the originals having been marked by me and the time of said proceedings and kept under my care, custody, and control.

I further certify that the taxable cost to the Defendant for the Transcript of the hearing is $537.30.

Witness my hand this the 15th day of August, A.D., 1989.

/s/ _____

CLARISIA RODRIGUEZ, C.S.R.
Deputy Official Court Reporter
275th District Court
State of Texas

STATE OF MAINE

		SUPERIOR COURT
AROOSTOOK, ss.		CIVIL ACTION DOCKET #85-16
F.H. VAHLSING, JR.	*	
Plaintiff	*	
	*	
vs.	*	ORDER
	*	
STATE OF MAINE B.E.P.	*	
Defendant	*	

This case is a Rule 80C Appeal from final State of Maine Board of Environmental Protection action, taken under the Uncontrolled Hazardous Substances Sites Act (38MRSA § 1361-1370).

After investigation the Defendant determined that the Plaintiff was in violation of the Act and ordered him to cease or prevent that activity. The Corporate Plaintiff was served with the order, the individual was not. In this administrative order, the corporation and individual were considered together, that is to quote from the order: "F.H. Vahlsing, Jr., and Vahlsing, Inc. are hereinafter referred to as 'Vahlsing'."

The corporation, after service, demanded and received a hearing before the Defendant, after which the Defendant issued a decision with findings of fact and conclusions holding the Corporate Plaintiff was a "responsible party" under the Act, finding that the Corporation was the only party seeking a hearing on the administrative order. However, the caption of

the decision named the individual Plaintiff, and the decision states "Therefore, pursuant to 38MRSA § 1365, the Board affirms the Commissioner's designation of uncontrolled hazardous site and continues the order issued pursuant to that designation.

The individual Plaintiff appealed the decision on the grounds he was never served pursuant to Section 1365(3). The Defendant admits no service was made on him and suggests he had actual knowledge and waived service in appearing at the hearing or, in the alternative, has no standing to appeal.

The transcript of the evidence at the hearing makes clear he appeared as President of the Plaintiff Corporation and not individually. See p.p. 1,8,9,19,13.

A fair reading of the administrative order and the decision together shows that the individual Plaintiff's interest could be affected. He could be subject to an action to compel under Section 1365(5), and therefore, has standing to bring a Rule 80C Appeal. He is, after all, a named party, and his standing to appeal rests upon something more than a mere particularized injury. *Matter of Lappie,* 377 A.2d 441 (Me. 1977); 5MRSA § 8001(6)(A).

Wherefore, ordered

1) Appeal sustained.
2) The decision of Defendant of August 17, 1984, is reversed with respect to F.H. Vahlsing, Jr.

Date: May 2, 1986

/s/ _____

Hon. Herbert Silsby, Justice
Superior Court

STATE OF MAINE

AROOSTOOK, ss.	SUPERIOR COURT CIVIL ACTION DOCKET CV-85-17	
VAHLSING, INC. Plaintiff	*	
vs.	*	ORDER
STATE OF MAINE BOARD OF ENVIRONMENTAL PROTECTION Defendant	*	

On May 9, 1986, the court gave counsel until May 27, 1986 to file briefs on the question of which party had the burden of proof. The court also found that there was sufficient evidence supporting the BEP decision. The finding was based upon the assumption the defendant had the burden of proof, but not made clear in the order of May 9, 1986.

The court has not found, nor have counsel pointed out any statute or rule or decision setting forth the land owner or operator (Responsible Party, § 1362(2)) has the burden of proof under the Hazardous Sites statutes.

The burden of proof is of fundamental importance and unless the legislature has otherwise provided the party or agency making an assertion has the burden of proving it. It was error of law to place the burden on Vahlsing, Inc.

Exhibit B-2

The Hazardous Substance Sites Act provides for some four steps for enforcement. First the commissioner may investigate and determine and order a responsible party to cease or prevent a hazardous activity. Section 1365(1). From this order the alleged responsible party may appeal to the board. Next the Attorney General may file suit for injunctive relief to abate, clean up, or mitigate the hazard. Section 1365(4)(5). And lastly the Attorney General may sue for any clean up costs and the statute clearly provides the state has the burden of proof that a defendant is a responsible party. The responsible party has several affirmative defenses. Section 1367.

The statutory scheme therefore contemplates the state has the burden of proof. It does not make sense that the state has the burden of proof at one step and not the others, and it is thereby also clear the legislature had the burden of proof in mind. The legislative intent it follows must be inferred that the state has the burden of proof at all steps in the process of enforcement. If the legislature intended otherwise they could easily have said so.

Wherefore, ordered

> Appeal sustained. Decision of the board vacated, and remanded to the commission for new hearing in accordance with this order.

DATED: June 4, 1986

/s/ _____
Herbert T. Silsby II
Justice, Superior Court

AROOSTOOK COUNTY
ROBERT R. RUSH, CLERK
JUN 6 1986
FILED & ENTERED
SUPERIOR COURT

No. 88-2127.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1988.

FRED H. VAHLSING, JR.,
Petitioner,

v.

THE STATE OF MAINE,
Respondent.

Supplemental Memorandum of Facts Filed by Fred H. Vahlsing, Jr.

ATTN: Justice Byron R. White and/or any other Justices as the Court deems appropriate:

NOW COMES, F. H. Vahlsing, Jr., Petitioner, pro se, and says:

1. On August 22, 1989, F. H. Vahlsing, Jr., Petitioner, pro se, filed a Memorandum entitled: "MEMORANDUM OF FACTS SUPPORTING MOTION FOR RECONSIDERATION FILED BY FRED H. VAHLSING, JR. ON AUGUST 17, 1989." In connection with such Memorandum, it was pleaded by F. H. Vahl-

sing, Jr. that in connection with the Indictment in connection with his charge of perjury, there was but one Charge (Number 3) of the three Charges of such Indictment remaining.

2. As of August 22, 1989, F. H. Vahlsing, Jr. did not have available the following documentation which evidences beyond a doubt that Charges 1 and 2 of the Indictment were dismissed by the Trial Court below, Honorable Jack Smith, Justice of the Superior Court. Attached hereto as Exhibit A are copies of pages 82 and 91 of Volume 12, TRANSCRIPT OF PROCEEDINGS (with jury), dated September 17, 1986, which set forth that Charge 1 and Charge 2 of the Indictment were dismissed, leaving only Charge 3 of the Indictment. Also attached hereto as Exhibit B for the Court's convenience is a copy of the Indictment of F. H. Vahlsing, Jr. setting forth the 3 Charges, 2 of which, Charges 1 and 2, having been dismissed.

Respectfully submitted,

/s/ _____

F. H. Vahlsing, Jr.
Petitioner, Pro Se
1119 South E St.
McAllen, Texas 78501
(512) 686-8581

STATE OF MAINE — SUPERIOR COURT
Criminal Action
Docket No. CR-85-652
PENOBSCOT, ss. — Law Docket No. Pen-86-505

STATE OF MAINE)
)
)
vs.)
)
)
FRED H. VAHLSING, JR.)

VOLUME 12

TRANSCRIPT OF PROCEEDINGS
(with jury)

BEFORE:

HONORABLE JACK SMITH, JUSTICE OF THE SUPERIOR COURT

Penobscot County Courthouse
97 Hammond Street
Bangor, Maine

September 17, 1986

APPEARANCES:

For the State: JAMES T. KILBRETH, ESQ.
FERNAND LaROCHELLE, ESQ.

For the Defendant: J. HILARY BILLINGS, ESQ.
MARSHALL A. STERN, ESQ.
F. H. VAHLSING, JR.

Exhibit A

. . . . . .

[82]

unless you were there. And not until June of 1984 does he bring up, oh, I used to lease that but I stopped in 1982.

THE COURT: Donation of the building to the town, under the terms of the lease, after the lease is canceled, after the lease is canceled, the Railroad may, if it wishes, take the building itself. It may.

MR. KILBRETH: It may.

THE COURT: Or it may tear the damn thing down and bill Vahlsing for tearing it down. I take that statement as Freddie trying to get out of any obligation he might have to Bangor and Aroostook under the terms of that lease for the cost of removing the structure, which I saw myself and is clearly not in very good shape, which might well be a structure which is beyond repair and would have to be torn down rather than fixed up. That why Bangor and Aroostook has that kind of language in its lease. But all of those obligations continue after the termination of the Permit and Agreement, after there is no longer a tenancy under it.

And so, as to one and two, I do not feel that there is sufficient evidence to go to the jury. I do feel that there is sufficient evidence to go to the jury on number three.

Now I understand that I'm not going to have everybody agree with me, but that is what my understanding of my . . . [91] viewed in the light most favorable to the State. But applying that standard, I have reached the conclusion that the proof still falls short on number two, for example, as to both proof of ownership and belief that such statement was false, which is the second important prong of the offense of perjury. And I also find that with respect to number one, that based upon the evidence that we have and viewed most favorably to the State, you can't come out with any other conclusion but that this was not a statement of fact by someone who knew that that fact was not true but rather

a quibble with a description that — that had appeared on this order, and I — I guess I just have to stick with my original decision, Mr. Kilbreth, although I appreciate your drawing that to my attention.

(Mr. Stern entered chambers.)

THE COURT: Did you wish to discuss with me — I don't — I'm just seeking some guidance at this point as to how — how I approach the jury once I have made this decision. Mr. Kilbreth wants to rest before the jury, and you know the motion can be made, but it has been made out of the — we have discussed it out of the hearing on the jury, and any discussion of it would be out of the hearing of the jury as to judgment of acquittal. And I intend to — to grant it with respect to those two statements as I've already indicated. That gets us to the point of what . . . **[111]** time as to anything. You are not to speculate as to what has happened with respect to the statements that I just discussed with you. You are not to discuss the case among yourselves or with anyone else, and you are to keep yourself pure so to speak; that is, you are to refrain from reading or listening to any comment about this case from any source. I know that you take that obligation seriously. Those juries that I've had contact with have always done that. I guess until 9:00 tomorrow morning, I have nothing further to give you. I do apologize for any periods of time that you have been idle. Your presence was of course important at all times. Goodnight. We will see you tomorrow morning.

(Court was recessed at 2:50 p.m.)

* * * * *

CERTIFICATE

I hereby certify that the foregoing is an accurate transcript of my stenographic notes of the testimony and proceedings in the above-entitled cause.

Dated this 27th day of May, 1988.

/s/ _____

Maureen A. Bradford
Official Court Reporter

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CRIMINAL ACTION
Docket No. 85-128

STATE OF MAINE	)	INDICTMENT FOR
	)	VIOLATION OF 17-A
v.	)	M.R.S.A. § 451
	)	(PERJURY) CLASS C
FRED H. VAHLSING, JR.	)	

The Grand Jury charges:

On or about December 19, 1984, in the County of Kennebec, State of Maine, Fred H. Vahlsing, Jr., did, in an official proceeding, namely a hearing before the State of Maine Board of Environmental Protection on an administrative order (hereafter the "Order" — a copy of which is attached hereto and incorporated herein by reference), issued by Henry E. Warren, Commissioner of Environmental Protection, and dated August 27, 1984, make false statements under oath, namely:

(1) that there then was no building on land in Easton, Maine, the land and building being described in paragraph 2 of the Order as the site containing waste pesticides and other hazardous wastes;

(2) that the building identified in the Order as containing waste pesticides and other hazardous wastes was not owned by Vahlsing, Inc.; and

Exhibit B

(3) that the building identified in the Order as containing waste pesticides and other hazardous wastes had been sold by Vahlsing, Inc. to McCain Foods, Inc. in 1976,

the said Fred H. Vahlsing, Jr. not believing the statements to be true and the said statements being material because, if believed by the Board, the Board would have been likely to find that, contrary to the Commissioner's conclusion and finding on page 3 of the Order, Vahlsing, Inc. was not a responsible party within the meaning of 38 M.R.S.A. § 1362(2) and hence was not subject to enforcement orders or liable for costs incurred by the State in abating any environmental hazards posed by the site as described in the Order, all in violation of 17-A M.R.S.A. § 451(1)(A) (1983).

A True Bill

/s/ _____
Foreman

Dated: 3/5/85

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA. MAINE 04333

ADMINISTRATIVE ORDER
IN THE MATTER OF

F.H. VAHLSING, JR. PRESIDENT and VAHLSING, INC.	DESIGNATION OF UNCONTROLLED HAZARDOUS SUBSTANCE SITE & ADMINISTRATIVE ORDER
Proceeding Under 38 M.R.S.A. Section 1365, Uncontrolled Hazardous Substance Sites	

JURISDICTION

This Designation of Uncontrolled Hazardous Substance Sites and Administrative Order is issued pursuant to the authority vested in the Commissioner of EnvironmentaL Protection under the Uncontrolled Hazardous Substance Sites Law, 38, M.R.S.A., Sections 1361-1360.

Findings of Fact

1. F.H. Vahlsing, Jr. is President of Vahlsing, Inc. Vahlsing, Inc. is a corporation organized and existing under the laws of the State of Delaware. F.H. Vahlsing, Jr. and Vahlsing, Inc. are hereinafter referred to as "Vahlsing."

2. Vahlsing is the owner of one building, formerly a potato house, and was the owner of that building during which time that chemicals, including hazardous substances, were brought to and placed in the building. The building is located on land in Easton, Maine, owned by Bangor and

Aroostook Railroad. The land is described as being Lot 19 on Map 14 which is on file at the Assessor's Office in the Town of Easton.

Vahlsing has leased the land upon which the building is located from the Bangor and Aroostook Railroad since 1971. In March 1983, Vahlsing received notification from the Railroad that the property lease would be cancelled if the rent for the years 1978-1983 was not paid. The rent was paid in July 1983 although a new lease agreement which had been forwarded to Vahlsing was never fully executed. According to the Railroad, Vahlsing continues to lease the property.

The building and land are hereinafter referred to as "the site."

3. Over 2,500 gallons of chemicals, including hazardous substances are located at the site in containers of various sizes and condition.

4. Vahlsing is storing or has disposed of, among others, the following hazardous substances at the site:

   a. 2,4-dinitro-6-(1-methylpropyl)-phenol (dinoseb)

   b. arsenic

   c. corrosive liquid

5. These substances exhibit the following characteristics and threats to public health and safety in the event they are released into the environment:

a. 2,4-dinitro-6-(1-methylpropyl)-phenol (dinoseb)

Dinoseb is highly toxic by oral and dermal exposure. Human deaths have occurred from ingestion, with convulsions and vomiting seen. Long term exposures of some animals to non-fatal doses have caused cataracts and reduced growth. The acute oral LD_{50} (rat) is reported variously as 25-30 mg/kg.

This substance is classified as acutely toxic hazardous waste #P020 under the Department of Environmental Protection's Hazardous Waste Management Rules.

b. Arsenic Compound

The signs and symptoms of arsenic poisoning vary in degree and timing depending on the form and amount of arsenic and other factors. The major characteristics of acute arsenic poisoning are profound gastrointestinal damage and cardiac abnormalities. The signs include excruciating abdominal pain, forceful vomiting, cramps in the legs, restlessness and spasms. A feeble and irregular pulse and other symptoms of collapse, prostration, stupor, convulsions, paralysis, collapse and death in coma have been described. Environmental exposure to arsenicals has been correlated with a high skin cancer risk among populations exposed to sunlight, suggesting interference with repair of DNA damage.

This substance is classified as EP Toxic Hazardous Waste #D004 under the Department of Environmental Protection's Hazardous Waste Management Rules.

c. Corrosive Liquid

A solution of this strength of acidity is comparable to a 0.6% solution of hydrochloric acid (muriatic acid). It is corrosive, dangerous to eyes and irritating to less sensitive tissues.

This substance is classified as Hazardous Waste #D002 due to corrosivity under the Department of Environmental Protection's Hazardous Waste Management Rules.

6. The substances described in Paragraph 5 have been designated as hazardous wastes by the Board of Environmental Protection pursuant to 38 M.R.S.A., Section 1303-A. They are, accordingly, hazardous substances within the meaning of 38 M.R.S.A., Section 1361. These substances are being or have been stored or disposed of at the site in such a manner that they may be released or discharged into the soil, groundwater or ambient air.

7. Vahlsing has violated 38 M.R.S.A., Section 1306, and related Hazardous Waste Management Rules for operating a waste facility without a permit issued by the Board.

In addition, Vahlsing has violated Hazardous Waste Management Rules relating to Standards for the Generators of Hazardous Waste.

8. The structural integrity of the building is rapidly decreasing. A portion of the roof has collapsed and other roof-supporting structures have become distorted from the stress. Falling timbers have the potential of rupturing the containers and releasing the hazardous substances. A majority of the containers of hazardous substances are located within a flooded

area of the potato house. Contact with this water decreases the life expectancy of the containers. A release of hazardous substance from either a ruptured or rusted container will contaminate this water and any surface water or ground water that it comes in contact with.

9. On December 1, 1983, a Letter of Warning was mailed from this Departmen to F.H. Vahlsing, Jr. directing him to properly remove the chemicals from the site. No reply was received by this Department.

   On January 17, 1984, a second Letter of Warning was mailed to F.H. Vahlsing, Jr. and F.H. Vahlsing, Jr. signed for the certified letter.

   On July 5, 1984, the Department mailed, by certified mail, two letters to F.H. Vahlsing, Jr. at two different locations. The letters explained the Department's intention to declare the site uncontrolled if plans for the site clean-up were not received within 5 days of receipt of the notification. Both letters were returned unclaimed.

BASED upon the above Findings of Fact, the Commissioner concludes and finds that:

1. Vahlsing stores or has disposed of hazardous substances, as defined in 38 M.R.S.A., Section 1362, at the site;

2. Vahlsing and the Bangor and Aroostook Railroad are responsible parties as defined in 38 M.R.S.A., Section 1362;

3. Hazardous substances located at the site may create a danger to public health or safety of persons or to the environment;

4. Continued danger to public health or safety of any person or to the environment exists as a result of the lack of security at the site and the presence and condition of the hazardous substances on the site.

5. The actual or threatened releases of hazardous substances from the site pose a threat or hazard to the public health, safety or welfare and to the natural environment; and

6. Immediate action is necessary to abate the threat, danger or hazard to public health, safety and the environment.

THEREFORE, pursuant to 38 M.R.S.A., Section 1365, the Commissioner hereby DESIGNATES the Vahlsing site in Easton, Maine as an Uncontrolled Hazardous Substance Site.

ORDER

Vahlsing, is hereby ordered and directed to:

1. Within five (5) days:

   A. Prepare a plan to properly remove all hazardous wastes, contaminated soil and water from the site for transport to and disposal at a licensed hazardous waste facility, submit that plan to the DEP for its review and approval, and implement that plan as approved by the DEP within five (5) days of DEP approval.

2. Vahlsing shall comply immediately with this Order.

DONE AND DATED AT AUGUSTA, MAINE THIS 27TH DAY OF AUGUST, 1984.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Henry E. Warren, Commissioner

RIGHTS OF REVIEW AND APPEAL

Vahlsing may apply to the Board of Environmental Protection for a hearing on this Order. The hearing shall be held by the Board within 3 days after receipt of the application. Within 7 days after the hearing, the Board shall make findings of fact and continue, revoke or modify the Order. The decision by the Board may be appealed to Superior Court in accordance with the Maine Administrative Procedure Act, 5 M.R.S.A., Section 11001, *et seq.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached documentation was mailed via first class, United States mail, postage prepaid, on the 5th day of September, 1989 to the following:

James T. Kilbreth, Esquire
Chief Deputy Attorney General
State House Station #6
Augusta, Maine 04333

/s/ _____
F. H. Vahlsing, Jr.